

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1324

Introduced by Assembly Member De La Torre

February 23, 2007

An act to amend ~~Sections 1371.8 and 1389.3~~ *Section 1371.8* of the Health and Safety Code, and to amend Sections 796.04, ~~10380, and 10384~~ *and 10380* of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1324, as amended, De La Torre. Health care coverage: rescinded coverage.

Existing law provides for regulation of health care service plans by the Director *of the Department* of Managed Health Care. Existing law provides for the regulation of health insurers by the Insurance Commissioner.

Existing law provides that a health care service plan or a health insurer that authorizes a specific type of treatment by a health care provider shall not rescind or modify this authorization after the provider renders the health care service in good faith and pursuant to the authorization.

This bill would define “authorizes” and “authorization” under these provisions.

~~Existing law prohibits postclaims underwriting, as defined, by health care service plans and health insurers, but does not limit a plan's or insurer's remedies in case of willful misrepresentation.~~

~~This bill would provide that a plan or an insurer has the burden of demonstrating to the director or the commissioner, as applicable, that an enrollee or insured engaged in willful misrepresentation.~~

Existing law provides that the falsity of a statement in a life or disability insurance policy application shall not bar the right to recovery under the policy unless the false statement was made either with actual intent to deceive or it materially affected the acceptance of the risk or hazard assumed by the insurer.

This bill, ~~with respect to health insurance~~, would require both of these conditions in order for falsity of a statement in the application to bar the right to recovery under the policy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1371.8 of the Health and Safety Code is
2 amended to read:

3 1371.8. A health care service plan that authorizes a specific
4 type of treatment by a provider shall not rescind or modify this
5 authorization after the provider renders the health care service in
6 good faith and pursuant to the authorization. This section shall not
7 be construed to expand or alter the benefits available to the enrollee
8 or subscriber under a plan. “Authorizes” and “authorization”
9 include, but are not limited to, verification of eligibility, authorizing
10 a procedure, or other communication by the plan indicating that
11 the health care services are covered under the plan.

12 ~~SEC. 2. Section 1389.3 of the Health and Safety Code is~~
13 ~~amended to read:~~

14 ~~1389.3. No health care service plan shall engage in the practice~~
15 ~~of postclaims underwriting. For purposes of this section,~~
16 ~~“postclaims underwriting” means the rescinding, canceling, or~~
17 ~~limiting of a plan contract due to the plan’s failure to complete~~
18 ~~medical underwriting and resolve all reasonable questions arising~~
19 ~~from written information submitted on or with an application before~~
20 ~~issuing the plan contract. This section shall not limit a plan’s~~
21 ~~remedies upon a showing of willful misrepresentation. A plan shall~~
22 ~~have the burden of demonstrating to the director the willful~~
23 ~~misrepresentation by the enrollee prior to rescinding coverage.~~

24 ~~SEC. 3.~~

25 SEC. 2. Section 796.04 of the Insurance Code is amended to
26 read:

1 796.04. A health insurer that provides coverage for hospital,
2 medical, or surgical expenses that authorizes a specific type of
3 treatment for services covered under a policyholder's contract or
4 plan by a provider shall not rescind or modify this authorization
5 after the provider renders the health care service in good faith and
6 pursuant to the authorization. This section shall not be construed
7 to expand or alter the benefits available or the terms and conditions
8 of the contract as may be agreed upon between a policyholder,
9 certificate holder, or trust, and the insurer. "Authorizes" and
10 "authorization" include, but are not limited to, verification of
11 eligibility, authorizing a procedure, or other communication by
12 the insurer indicating that the health care services are covered
13 under the contract or plan.

14 ~~SEC. 4.~~

15 *SEC. 3.* Section 10380 of the Insurance Code is amended to
16 read:

17 10380. The falsity of any statement in the application for any
18 policy covered by this chapter shall not bar the right to recovery
19 under the policy unless the statement was made with actual intent
20 to deceive ~~or unless~~ *and* it materially affected either the acceptance
21 of the risk or the hazard assumed by the insurer. ~~However, the~~
22 ~~falsity of any statement in the application for any policy of health~~
23 ~~insurance shall not bar the right to recovery under the policy unless~~
24 ~~the false statement was made with actual intent to deceive and it~~
25 ~~materially affected either the acceptance of the risk or the hazard~~
26 ~~assumed by the insurer.~~

27 ~~SEC. 5.~~ Section 10384 of the Insurance Code is amended to
28 read:

29 10384. ~~No insurer issuing or providing any policy of health~~
30 ~~insurance shall engage in the practice of postclaims underwriting.~~
31 ~~For purposes of this section, "postclaims underwriting" means the~~
32 ~~rescinding, canceling, or limiting of a policy or certificate due to~~
33 ~~the insurer's failure to complete medical underwriting and resolve~~
34 ~~all reasonable questions arising from written information submitted~~
35 ~~on or with an application before issuing the policy or certificate.~~
36 ~~An insurer shall have the burden of demonstrating to the~~
37 ~~commissioner the willful misrepresentation by the insured prior~~
38 ~~to rescinding coverage.~~

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